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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43420
Plaintiff-Respondent,)	
)	Cassia County Case No.
v.)	CR-2014-4329
)	
DEREK A. MAXWELL,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Maxwell failed to establish that the district court abused its discretion by relinquishing jurisdiction and executing a reduced unified sentence of six years, with one year fixed, imposed upon his guilty plea to burglary?

Maxwell Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Maxwell pled guilty to burglary and the district court imposed a suspended unified sentence of six years, with two years fixed, and placed Maxwell on probation for three years. (R., pp.54-61.)

Twenty-three days later, Maxwell's probation officer arrested him on an Agent's Warrant, and the state subsequently filed a motion for probation violation alleging Maxwell had violated his probation by changing residences without permission; consuming alcohol, methamphetamine, marijuana, and Spice; "associating with known drug dealers to sell marijuana for profit"; and failing to register with the Idaho Division of Vocational Rehabilitation as directed by the district court and by his probation officer. (R., pp.68-69, 73-78.) Maxwell admitted to violating his probation as alleged, and the district court revoked his probation, ordered his underlying sentence executed, and retained jurisdiction for 365 days. (R., pp.81-83.)

After a period of retained jurisdiction, the district court relinquished jurisdiction and ordered Maxwell's sentence executed; however, it *sua sponte* modified his sentence to a unified sentence of six years, with one year fixed. (R., pp.89-93.) Maxwell timely appealed from the district court's order relinquishing jurisdiction. (R., pp.94-96.)

Maxwell asserts that the district court abused its discretion when it relinquished jurisdiction in light the fact that he obtained his GED while on his Rider, his good behavior in his Career Bridge Two and Computer Skills programs, his successful completion of Anger Management, and the facts underlying some of his disciplinary sanctions. (Appellant's brief, pp.4-6.) The record supports the decision of the district court to relinquish jurisdiction.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See

State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

Maxwell is not an appropriate candidate for probation, particularly in light of his ongoing disregard for the terms of community supervision, repeated refusal to abide by program rules, and failure to demonstrate any responsibility for his actions or desire for rehabilitative progress. (PSI, pp.90-108.¹) In its order relinquishing jurisdiction, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for relinquishing jurisdiction. (R., pp.89-93.) The state submits that Maxwell has failed to establish an abuse of discretion, for reasons more fully set forth in the district court's Order Relinquishing Jurisdiction and Modifying Sentence, which the state adopts as its argument on appeal. (Appendix A.)

¹ Citations to the PSI are to the electronic file "Derek Maxwell-Confidential Exhibits.pdf."

Conclusion

The state respectfully requests this Court to affirm the district court's order relinquishing jurisdiction and executing a reduced sentence.

DATED this 17th day of December, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 17th day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

BEN P. MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

2017.07.14 11:17:09

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

STATE OF IDAHO,

Plaintiff,

vs.

DEREK A MAXWELL,

Defendant.

Case No. CR-2014-4329

**ORDER RELINQUISHING
JURISDICTION AND MODIFYING
SENTENCE**

PROCEDURAL BACKGROUND

In the above-entitled case, the Defendant Derek Maxwell pled guilty to the offense of burglary, a violation of I.C. § 18-1401. On January 6, 2015, the court sentenced the Defendant to a unified term of imprisonment of six years with two years determinate, suspended the sentence, and placed the Defendant on probation. The Defendant violated the terms and conditions of his probation. On February 10, 2015, the court revoked the Defendant's probation, imposed the sentence, and retained jurisdiction.

The court received an Addendum to the Pre-Sentence Investigation ("APSI") from the IDOC, North Idaho Correctional Institution ("NICI"), dated June 1, 2015. The APSI recommends that the court consider relinquishing jurisdiction over the Defendant.

DISCUSSION

As a preliminary matter, the court can determine to relinquish retained jurisdiction without a hearing; a defendant does not have a right to a hearing under these circumstances. *State v. Coassolo*, 136 Idaho 138, 143, 30 P.3d 293, 298 (2001). The court determines that it will not conduct a hearing in this case.

The decision whether to place a defendant on probation or to relinquish jurisdiction over a defendant is a matter within the discretion of the sentencing court. *State v. Schultz*, 149 Idaho 285, 288, 233 P.3d 732, 735 (Ct.App.2010). The court perceives the issue in the present case to be a matter of discretion and exercises that discretion pursuant to the following legal authority. "The primary purpose of retained jurisdiction is to enable the trial court to obtain additional information regarding the defendant's rehabilitative potential and suitability for probation." *State v. Rothwell*, 154 Idaho 125, 138, 294 P.3d 1137, 1150 (Ct.App.2013). The bounds of the court's discretion are the sentencing factors set forth at I.C. § 19-2521 and the information that the court receives for consideration pursuant to those factors. *State v. Merwin*, 131 Idaho 642, 648, 962 P.2d 1026, 1032 (1998).

In this case, the Defendant was assigned to participate in the traditional rider program at the NICI. The Defendant did not receive any formal disciplinary sanctions, but he received six informal disciplinary sanctions for possessing unauthorized property, engaging in possible gang activity, failing to complete community service, entering another offender's locker to retrieve a

booking slip written about the Defendant, disobeying orders, and threatening to punch another offender in the face.

NICI staff described the Defendant as a "severe disciplinary problem" and reported that the Defendant exhibited "aggressive and unpredictable" behavior throughout his time in the retained jurisdiction program. (APSI 4.) The Defendant attempted to manipulate staff in order to get by without doing his program. On several occasions, the Defendant expressed to staff that he wanted the court to relinquish jurisdiction over him. He also told staff that no program could help him and that he had no desire to change his behavior. In group classes, the Defendant did not show concern or remorse when confronted regarding his behavior, and he would not accept accountability. NICI staff reported that the Defendant's "inability to follow rules and recognize poor decision making are a concern, showing he lacks insight with his thinking patterns and behaviors." (APSI 7.)

The court retained jurisdiction because it needed further evaluation of the Defendant regarding his suitability for probation. As set forth above, the Defendant was unwilling to fully participate in rehabilitative programming, he exhibited persistent thinking errors, and he was considered to be a severe disciplinary problem. The court is persuaded that the Defendant is not amenable to supervision and that there is an undue risk the Defendant would commit another offense if he were placed on probation. Therefore, after reviewing the APSI, the court is satisfied that the Defendant is not a suitable candidate for probation at this time.

ORDER

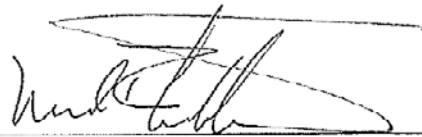
Based on the foregoing considerations, the court is persuaded that the interests of the good order and protection of society are best served by the court relinquishing jurisdiction in this case over the Defendant to the IDOC, effective immediately.

The Defendant's sentence, as found in the Judgment of Conviction and Order Suspending Sentence and Granting Probation, dated January 6, 2015, is modified pursuant to I.C.R. 35(b) as follows:

<u>Minimum period of confinement:</u>	1 year
<u>Indeterminate period of confinement:</u>	5 years
<u>Total unified term:</u>	6 years

Credit for Time Served: The Defendant is given credit for all time served in the county jail and in the custody of the IDOC prior to the entry of this order.

It is so **ORDERED** this 8th day of June, 2015.



MICHAEL R. CRABTREE
District Judge

RIGHT TO APPEAL/LEAVE TO APPEAL IN FORMA PAUPERIS

The Right: The court hereby advises the Defendant of the right to appeal this Order within forty two (42) days of the date it is file stamped by the clerk of the court. I.A.R. 14(a).

In Forma Pauperis: The court further advises the Defendant of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis, meaning the right as an indigent to proceed without liability for court costs and fees and the right to be represented by a court appointed attorney at no cost to the Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2015, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

- | | |
|---|--|
| 1. Cassia County Prosecuting Attorney | <u> X </u> e-mail - dnoriyuki@cassiacounty.org |
| 2. Public Defender | <u> X </u> e-mail - mspeers@cassiacounty.org |
| 3. MCCJC | <u> X </u> e-mail - mccjc@cassiacounty.org |
| 4. Idaho Department of Corrections
Central Records | <u> X </u> e-mail - centralrecords@idoc.idaho.gov |
| 5. Idaho Department of Corrections
Sentencing Team | <u> X </u> e-mail - ccdsentencingteam@idoc.idaho.gov |
| 6. Idaho Department of Probation & Parole | <u> X </u> e-mail - dist5@idoc.idaho.gov ;
england@idoc.idaho.gov |
| 7. Bureau of Criminal Investigations (BCI) | <u> X </u> e-mail - cch@isp.idaho.gov |

By 
Deputy Clerk